

FCC MAIL SECTION
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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-69

In the Matter of

Amendment of Section 73.202(b), RM-8106
Table of Allotments,
FM Broadcast Stations.
(San Carlos and Oracle, Arizona)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 29, 1995;

Released: July 10, 1995

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making and Order to Show Cause* ("Notice").⁸ 8 FCC Rcd 2241 (1993), issued in response to a petition filed by Desert West Air Ranchers Corporation ("petitioner"), permittee of Station KCDX(FM),¹ Channel 279A, San Carlos, Arizona, proposing the substitution of Channel 276C2 for Channel 279A and modification of its authorization accordingly. To accommodate its proposal, petitioner also requested the substitution of Channel 279A for Channel 276A at Oracle, Arizona, and modification of the license for Station KLOB(FM), Channel 276A. Petitioner filed supporting comments in response to the *Notice*.² In re-

sponse to the *Order to Show Cause*, an unacceptable counterproposal and reply comments were filed by Golden State Broadcasting Corporation ("Golden State"), licensee of Station KLOB(FM), Oracle, Arizona, to which petitioner responded.³

2. In its comments petitioner reaffirms its interest in the Channel 276C2 upgrade at San Carlos and the modification of its authorization for Station KCDX(FM).

3. In light of the rejection of Golden State's counterproposal, *supra*, and in the absence of a substantial or material question of fact having been raised by it in response to the *Order to Show Cause*, or a demonstration that Station KLOB(FM) would be unduly harmed by the modification of its license to specify operation on Channel 279A at Oracle, Arizona, we believe the public interest would be served by granting petitioner's modification request. Therefore, we will substitute Channel 276C2 for Channel 279A at San Carlos, and modify the authorization of Station KCDX(FM) accordingly, to specify operation on the higher powered channel. The modification of Station KCDX(FM) at San Carlos will afford Station KLOB(FM) an opportunity to operate at maximum Class A facilities at Oracle, a benefit not presently available to it. Therefore, we will substitute Channel 279A for Channel 276A at Oracle, Arizona, and modify the authorization for Station KLOB(FM) accordingly, since it could provide an expanded service to that community. Channel 279A can be used by Station KLOB(FM) at its current location.

4. Commission policy requires reimbursement to affected licensees or permittees for reasonable costs associated with changing frequencies. *See, Circleville, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its intention to reimburse Station KLOB(FM) for the reasonable costs related to the Class A frequency change at Oracle.

¹ Formerly Station KOYF(FM). The call sign change was effective May 24, 1993.

² As stated in the *Notice*, although petitioner's request was signed and its address given, it did not verify the statements contained in the petition as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the noted deficiency in its responsive comments, and has complied accordingly.

³ Golden State requested the substitution of Channel 276C2 for Channel 276A at Oracle. In order to accommodate the upgrade at Oracle, Golden State also requested the substitution of Channel 275A or Channel 277A for vacant and unapplied for Channel 276A at Comobabi, Arizona. A staff engineering analysis has determined that Channel 276C2 at Oracle would be short-spaced to vacant Channel 276B, Cananea, Sonora, Mexico, by 52.3 kilometers (32.5 miles) under the terms of the 1972 U.S./Mexican Agreement ("1972 Agreement") and by 49.3 kilometers (31 miles) under the terms of the 1992 U.S./Mexican Agreement ("1992 Agreement"), at coordinates 30-58-57 and 110-18-01. Furthermore, Golden State's requested substitution of Channel 275A for Channel 276A at Comobabi, Arizona, is short spaced to Station XHQT-FM, Channel 274B, Nogales, Sonora, Mexico, by 10.7 kilometers (6.6 miles) under the terms of the 1992 Agreement and by 55.7 kilometers (34.6 miles) under the terms of the 1972 Agreement, at coordinates 31-19-10 and 110-57-06. Likewise, requested Channel 277A at Comobabi is short spaced to Station XHRZ-FM, Channel 278B, Nogales, Sonora, by 10.2 kilometers (6.3 miles) under the terms of the 1992 Agreement and by 55.2 kilometers (34.3 miles) under the

terms of the 1972 Agreement, at coordinates 31-19-28 and 110-56-47.

Additionally, in order to accommodate its proposal, Golden State requested the deletion of Channel 276B, Cananea, Sonora, Mexico. However, it is the Commission's policy not to request the deletion of foreign allotments.

Golden State's proposal was filed prior to the June 2, 1995, effective date of the 1992 Agreement, and therefore, it has been considered under the terms of the 1972 Agreement.

Also, neither of the requested Class A channel substitutions at Comobabi, Arizona, complies with the minimum distance separation requirements of Section 73.208(b)(3) of the Commission's Rules. Effective October 2, 1989, Class A channel allotment requests must specify maximum operating facilities (i.e., 6 kilowatts effective radiated power (ERP) with a maximum height above average terrain (HAAT) of 100 meters (328 feet)). *See, Second Report and Order*, MM Docket No. 88-375, 4 FCC Rcd 6375 (1989), *recon.*, 6 FCC Rcd 3417 (1991). Moreover, pursuant to the provisions of the 1972 and the 1992 Agreements, a Class A, 6 kilowatt channel is treated as a Class B or AA channel respectively. Additionally, the requested deletion of Channel 276B at Cananea, Sonora, Mexico, cannot be accommodated under the minimum distance separation requirements of either the 1972 or the 1992 Agreements.

In view of the enumerated deficiencies, Golden State's counterproposal was not placed on Public Notice.

Technical Statement

5. As indicated in the *Notice*, Channel 276C2 can be substituted for Channel 279A at San Carlos consistent with the minimum distance separation requirements of the Commission's Rules, at the petitioner's currently authorized site, located 27.2 kilometers (16.9 miles) west of the community at coordinates 33-23-13 and 110-44-25. Additionally, Channel 279A can be substituted for Channel 276A at Oracle at the licensed site of Station KLQB(FM) at coordinates 32-37-07 and 110-47-20. As San Carlos and Oracle are each located within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government in this proposal was obtained.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 24, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
San Carlos, Arizona	276C2
Oracle, Arizona	279A

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Desert West Air Ranchers Corporation (File No. BPH-910516ML) for Station KCDX(FM), San Carlos, Arizona, IS MODIFIED to specify operation on Channel 276C2 in lieu of Channel 279A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Golden State Broadcasting Corporation (File No. BLH-900809KC) for Station KLQB(FM), Oracle, Arizona, IS MODIFIED to specify operation on Channel 279A in lieu of Channel 276A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KLQB(FM)'s license (File No. BLH-900809KC), except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license File No. BLH-900809KC, except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Desert West Air Ranchers Corporation, permittee of Station KCDX(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade at San Carlos, Arizona.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee of Station KLQB(FM), as follows: Golden State Broadcasting Corporation, P.O. Box 26040, Tucson, Arizona 85726.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau